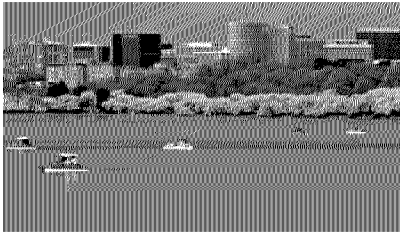


Water Law News for February 2, 2012
Mary Grady to: Steven Neugeboren
Bcc: Mindy Kairis

02/02/2012 09:56 AM

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WATER LAW NEWS FEBRUARY 2, 2012

BN&A, Inc.

Daily Environment

REPORT

HIGHLIGHTS

Drilling

EPA Takes Heat for Quality of Draft Report Linking Water Contamination to Fracking

An Environmental Protection Agency draft report on water contamination in Pavillion, Wyo., does not appear to support its own tentative, much-publicized conclusion about a "likely" link to hydraulic fracturing, according to...

Drilling

House Natural Resources Backs Three Bills To Expand Oil, Natural Gas Development

The House Natural Resources Committee approved three energy bills Feb. 1 that would expand U.S. oil and natural gas development and use the anticipated revenue stream to help finance the House Republican's version of a long-term transportation...

Drilling

States Expanding Efforts to Address Concerns Over Hydraulic Fracturing, NGA Report Says

States are increasing their efforts to address public health and environmental concerns related to hydraulic fracturing, the process of injecting water, sand, and chemicals into the ground to boost extraction of natural gas, the National...

Water Pollution

Alaska Study Says Sulfolane Contamination In Well Water Not Proven Health Hazard

ANCHORAGE, Alaska—A study by the Alaska Department of Health and Social Service's Epidemiology Section found that there were no measurable health impacts from sulfolane contamination in well water in the Fairbanks suburb of...

Water Pollution

Bill Would Limit EPA Authority Over Nutrients

Rep. Steve Southerland (R-Fla.) introduced a bill Jan. 31 that would limit the Environmental Protection Agency's authority over Florida's numeric nutrient criteria. The bill would require EPA to back the numerical nutrient standards...

Water Pollution

EPA Plans to Finalize Recreational Water Quality Criteria by October

The Environmental Protection Agency plans to finalize water quality criteria for recreational waters in October and is considering increasing the frequency of recommended water sampling and specifying the method for calculating bacterial...

Water Pollution

Legislation Approved to Suspend Authority Of S.C. Agency Over Savannah River Dredging

RALEIGH, N.C.—The authority of the South Carolina Department of Health and Environmental Control (DHEC) over dredging in the Savannah River would be suspended under a joint resolution (H. 4627) approved by the state Legislature Feb....

Wetlands

USDA Seeks Wetlands, Erodible Lands In Conservation Reserve Program

The Agriculture Department announced Feb. 1 that it wants to enroll new wetlands and other "environmentally sensitive farmlands" into the Conservation Reserve Program during a four-week period beginning March 12. ...

CORRECTION

An article in the Feb. 1 report about the White House outlining efforts by 26 agencies to curb burdensome rules incorrectly indicated that the White House released final reports from the various agencies on Jan. 30. The Jan. 30 announcement...



Inside EPA Weekly Report, 2/3/12

<http://insideepa.com/Inside-EPA/Inside-EPA-02/03/2012/menu-id-67.html>

Jackson Downplays Concerns Over Broad EPA Oversight Of Fracking Wells

EPA Administrator Lisa Jackson says the agency's limited resources make it impossible for federal regulators to be able to broadly oversee hydraulic fracturing operations -- even if Congress were to restore EPA's legal authority to regulate the injection process once officials complete their pending study on whether the process impacts drinking water.



**OIL AND GAS:
Absences, disagreements abound at fracking hearing**

Mike Soraghan, E&E reporter

Published: Thursday, February 2, 2012

Josh Fox wasn't the only person missing from yesterday's contentious hearing on gas drilling and water contamination in Pavillion, Wyo.

The anti-drilling filmmaker of "Gasland" fame was escorted out in handcuffs when he tried to film the House Science subcommittee hearing without permission (*E&ENews PM* , Feb. 1).

Residents of Pavillion said they weren't even invited to testify. Nor were Wyoming state agency officials who led the coordination with EPA on the study or the EPA officials who first authorized the investigation during the George W. Bush administration.

SPECIAL REPORT



A new wave of drilling, fueled by the practice some call "fracking," is promising prosperity and energy security for the country. E&E investigates whether anyone is ensuring it's done right. **Click here** to read the report.

Also absent was Encana Corp., the Calgary, Alberta-based gas driller that operates in the area. The company has published detailed criticism about EPA's findings, but its representatives weren't at the witness table.

Also missing: the EPA scientists who wrote the report concluding that hydraulic fracturing chemicals contaminated the aquifer under Pavillion. However, their boss, EPA Region VIII Administrator Jim Martin, was there.

Nonetheless, it was the scientists, and more precisely, their methods, that Republicans focused on as they assailed EPA's conclusions in the hearing they titled "Fractured Science."

"The scientific method is a process characterized by the development of a hypothesis, creation of a rigorous experiment to test it, documentation of observations and objective analysis of results," said Rep. Andy Harris (R-Md.), chairman of the Energy and Environment Subcommittee that held the hearing. "As far as I can see, EPA never got past the first step."

Harris accused EPA of failing to consult with Wyoming state government officials, failing to abide by its own laboratory protocols and not following U.S. Geological Survey guidelines for water monitoring wells. He also said EPA failed to make public key supporting data until the night before the hearing.

The Wyoming official who did attend, state Oil and Gas Supervisor Tom Doll, backed up Harris. He said state officials might have been told when water sampling was going to happen, but that does not mean EPA was consulting with them.

"We were not consulted," Doll said.

EPA's Martin, though, said EPA did consult with Wyoming officials in a different agency, the Wyoming Department of Environmental Quality.

"I believe we conducted significantly more consultation than Mr. Doll is perhaps aware of," Martin said.

Harris, a physician, grilled Martin on why the agency's press release said that fracturing chemicals "likely" caused contamination of the aquifer, while the report itself said that the evidence "best supports" that conclusion. He said the report is conceding much more uncertainty than the agency let on in its press release.

"There is a world of difference between 'likely' and 'best represents,'" Harris said. "I've written a lot of scientific papers. When my P value wasn't high enough, ['best represents'] is what I used."

A "P value" is a measure of scientific certainty.

But Bernard Goldstein, a professor of public health at the University of Pittsburgh and an EPA research director during the Reagan administration, said he didn't see the distinction.

The main problem he saw was that there is no "baseline" information about the quality of water in the area before drilling began.

"It doesn't sound any different to me," Goldstein said. EPA's report, he said, "was appropriately hedged based on not having the data. This would have been a simple process if there was baseline sampling. Without it, you're going to have some degree of uncertainty."

EPA's study did not find contamination from hydraulic fracturing chemicals in the water that people drink from in Pavillion. It found the

contamination deeper in the aquifer (*Greenwire* , Jan. 23).

A publicity stunt?

The arrest of Fox, whose "Gasland" documentary was nominated for an Academy Award last year, threatened to overshadow the hearing and its message. Fox is working on a sequel to "Gasland," which prominently featured residents of Pavillion.

Critics of drilling seized on Fox's ouster and arrest to say that congressional Republicans must have been hiding something. Harris countered that the hearing was broadcast live on the web and the archived video is available on the committee website.

After he was fingerprinted and released, Fox put out a statement that said Republicans' actions at the hearing contradicted their contention that they are trying to operate the House more openly.

"Such a brazen attempt to discredit and silence the EPA, the citizens of Pavillion and documentary filmmaking will ultimately fail and it is an affront to the health and integrity of Americans," Fox said.

Industry figures, though, dismissed Fox as a publicity hound.

"It is nice publicity stunt for his upcoming movie 'Gasland 2: Fracking Boogaloo.' Stunts are about all he can do because he certainly doesn't care about facts of natural gas drilling or reality of its impacts," said Frank Maisano, a public relations consultant for oil and gas and other energy firms.

Meanwhile, affected landowners in the Pavillion area have been invited to a meeting with Gov. Matt Mead (R) on Monday to discuss "long-term water strategy" for the Pavillion area.

HYDRAULIC FRACTURING: Filmmaker stirs up fracking foes, overshadows GOP hearing

Mike Soraghan, E&E reporter

Published: Wednesday, February 1, 2012

Updated at 5:23 p.m. EST.

There's no use chanting "Free Josh Fox!" He's already free. And he's scheduled his first interview about being arrested today by Capitol Police.

Fox, the anti-drilling documentary filmmaker, was released shortly after his arrest this morning while trying to film a House Science subcommittee hearing without permission (*Greenwire* , Feb. 1).

He was led out of the hearing room, taken to a Capitol Police station, fingerprinted and released after being charged with unlawful entrance, Fox said in an email exchange with *E&ENews PM* . MSNBC has announced he will give his "first interview" since the incident on "The Ed Show" tonight at 8 p.m. EST.

But Fox had already told *The New York Times* that his arrest "is emblematic of what is happening across the world."

Fox's ouster overshadowed a hearing called by committee Republicans to criticize EPA's findings that hydraulic fracturing by natural gas drillers contaminated groundwater around Pavillion, Wyo.

It also elicited howls from drilling critics.

"Wondering what they were trying to hide?" the group Food and Water Watch asked on its Twitter feed. "Us too."

Fox issued a statement late today calling his removal "an act of civil disobedience, done in an impromptu fashion." Fox said he had a court date set for Feb. 15.

"When I was led out of the hearing room in handcuffs, John Boehner's pledge of transparency in congress was taken out with me," Fox said in the statement.

The Republican majority staff of the Science, Space and Technology Committee issued a statement after the hearing stressing that Fox was not properly credentialed.

"The individual removed was not accredited by the House Radio and TV Gallery and had refused to turn off his camera upon request by Capitol police," the statement says.

Energy and Environment Subcommittee Chairman Andy Harris (R-Md.) added during the hearing that the hearing was streamed live on the Internet and that a webcast was available after the hearing.

Wyoming officials have dismissed EPA's finding that hydraulic fracturing by natural gas drilling companies contaminated the aquifer under Pavillion, as has Encana Corp., the area's primary driller. Both have also disparaged the federal agency's methods and criticized it for not releasing information (*E&ENews PM* , Jan. 31).

Republicans in charge of the hearing made clear that they share those sentiments, calling the hearing "Fractured Science."

EPA's study found that the contaminants discovered in the aquifer through drilling deep monitoring wells have not migrated upward into drinking water wells.

Fox entered the hearing room with the general public before the hearing began, though a videographer with him was blocked. Fox proceeded to try to record the proceedings. Capitol police gathered around him and led him out just before the hearing began at 10:10 a.m.

"This is a public hearing!" Fox shouted. "I'm within my First Amendment rights!"

Rep. Brad Miller (D-N.C.), the top Democrat on the subcommittee, protested and said the committee had turned away an accredited ABC News crew before the hearing. The committee statement said that was not the case, saying the ABC News Washington bureau confirmed to the committee it was unaware of sending any crew to tape the hearing. Attempts to reach an ABC News spokeswoman were not successful.

Fox, whose "Gasland" documentary on HBO was nominated for an Academy Award, is working on a sequel. In December, Fox announced he would drive a water truck to Dimock, Pa., after state officials allowed a drilling company to stop water deliveries to people whose wells were contaminated by drilling.

Two New York Democratic lawmakers joined in the denunciations of the arrests. Rep. Maurice Hinchey, who represents the upstate region, called Fox's arrest "beyond unacceptable." Rep. Jerrold Nadler, who represents New York City, said that in the 19 years he has been in Congress, "I cannot recall a chair of any committee or subcommittee having ever ordered the removal of a person who was filming a committee proceeding and not being disruptive, whether or not that person was accredited."

NATURAL GAS: Vt. House set to OK three-year frack ban; Senate, governor to follow

Colin Sullivan, E&E reporter

Published: Wednesday, February 1, 2012

The Vermont House of Representatives is poised today to move legislation that would ban hydraulic fracturing for three years, over protests from conservatives who claim developers don't want to drill for shale gas there in the first place.

A final vote on the House bill, H. 464, is thought to be a formality following preliminary approval of the measure yesterday. Sources familiar with Vermont politics say the moratorium will coast in the Senate and is supported by Gov. Peter Shumlin (D).

SPECIAL REPORT



The measure cleared the House Fish, Wildlife and Water Resources Committee last week after it was amended to insert a three-year moratorium in favor of an outright ban. Bill co-author Tony Klein (D), chairman of the House Natural Resources and Energy Committee, said in an interview from Montpelier that the permanent prohibition still has a chance in the Senate.

A new wave of drilling, fueled by the practice some call "fracking," is promising prosperity and energy security for the country. E&E investigates whether anyone is ensuring it's done right. [Click here](#) to read the report.

Asked if the governor would sign either bill, Klein said, "Oh yeah, he'll sign."

Klein explained that he drafted the legislation on fears that chemicals from fracturing -- also called "fracking" or "hydro-fracking" -- could contaminate groundwater. He said Vermont residents need to be protected from gas development until more scientific certainty is available on water pollution and whether fracking wells release methane, a potent greenhouse gas, into the atmosphere.

But some conservatives, led by climate change skeptics at the Heartland Institute, have pounced on the moratorium as an example of liberal politics out of control in the Northeast. John Monaghan, an energy specialist at the group, said the ban has proceeded as a way to give political cover to Democrats in neighboring New York who want to halt development of the Marcellus Shale.

"In New York, where the state has abundant reserves, activists will use the decisions made in Vermont and New Jersey to justify an overly cautious approach that leaves New Yorkers economically disadvantaged compared to other producing states," Monaghan said via email. "It is really a shame that these scare campaigns are driving the public narrative."

Jay Lehr, science director at Heartland, called the prohibition "amusing" and amounts to green posturing.

"Of course the idea is to just show that Vermont does not want any of that dirty old fossil fuel, which of course just shows off the low IQ of Vermont legislators," he said.

Yet Laurence Becker, Vermont's state geologist, begs to differ. In a phone interview, Becker insisted there are shale deposits in northwestern Vermont that are thought to be similar to formations in neighboring Quebec, where natural gas has been produced.

"We do have shale, and we have some thickness of the shale," said Becker, explaining that the thickness indicates whether organic content might be present even though no exploratory drilling has taken place in the region.

Becker, in a [study](#) presented to the Quebec Oil and Gas Association in 2010, found that Vermont is home to shale that is "equivalent" to the Utica Shale in an area known as Black Stony Point in northern Vermont.

"If somebody came looking, they'd probably find that out," he said.

'Not a symbolic vote'

To Klein, complaints from Heartland and other groups, and the presence of an American Petroleum Institute lobbyist in Montpelier during the debate, indicates that development is a real future possibility.

"I guess it all depends on what Fantasy Island map you're looking at," Klein said. "It is not a symbolic vote. ... We just wanted to close the door early."

When asked if the vote might affect New York state politics, where regulators are still considering whether to overturn a fracking moratorium, Klein was not shy about saying he would accept that result.

"If that's the result, that's fine with us," he said.

A look at Vermont's energy mix shows significant differences from New York, which is much more reliant on natural gas. Paul Burns, executive director at Vermont PIRG, pointed out that his state gets one-third of its power from the Vermont Yankee nuclear power plant, one-third from Hydro Quebec and the rest from various sources, including renewables.

So fracturing for gas "does not fit into that vision" for Vermont, Burns said.

"As to [the] statement about nobody wanting to drill here, I think ... API would beg to differ," he added. "They not only had the local hired-hand lobbying against the ban, they flew a lobbyist in from D.C. as well."

API spokesman Reid Porter did not contest the presence of a lobbyist for the group in Vermont. API "supports the responsible development of this resource" in Vermont and elsewhere, he said.

"While Mr. Burns may have well documented credentials in law and fundraising, we don't see that he has any expertise in the area of hydraulic fracturing," Reid said. "We would therefore urge him to get the facts on this issue before trying to stop energy development in the Northeast."

**OIL AND GAS:
Texas fracking disclosure law kicks in today**

Nathanial Gronewold, E&E reporter

Published: Wednesday, February 1, 2012

HOUSTON -- Texas oil and gas drillers employing hydraulic fracturing must now disclose the chemical mixes they use to unlock trapped hydrocarbons by law starting today.

Companies have made voluntary disclosures via the national [FracFocus](#) website for months now. But to alleviate concerns over the potential for groundwater contamination, the Texas Legislature, working with the industry, drafted what it said at the time was the most far-reaching chemical disclosure rule in the nation.

The Texas Railroad Commission, which regulates the oil and gas industry in the state, later adopted a rule mandating participation by all drillers beginning Feb. 1.

SPECIAL REPORT



"The disclosure requirement applies to all newly permitted wells," said Debbie Hastings, vice president of environmental affairs at the Texas Oil & Gas Association. "However, several companies have already voluntarily disclosed this information on the FracFocus web site for approximately 50 percent of all Texas wells on which the hydraulic fracturing treatment is performed."

A new wave of drilling, fueled by the practice some call "fracking," is promising prosperity and energy security for the country. E&E investigates whether anyone is ensuring it's done right. [Click here](#) to read the report.

Other states are following suit. A recently passed law in Colorado enters into force on April 1. Oklahoma and West Virginia are reportedly considering similar laws, while Louisiana, Montana and Wyoming have already passed chemical disclosure rules.

Companies must also disclose the amount of water consumed in the process, which forces sometimes millions of gallons of fluid mixture underground to crack rock formations, freeing up gas and oil. Chemicals that are deemed "trade secrets" do not have to be reported on in detail, but oil and gas companies must at least name the chemical family.

Environmentalists mostly hailed the passage of the Texas disclosure bill, seeing it as a tough sale in a pro-industry state Legislature. But early on, Scott Anderson, a senior policy adviser at the Texas branch of the Environmental Defense Fund (EDF), warned other states to not mimic the Texas bill in their own lawmaking.

"Environmental Defense Fund must oppose adoption of the Texas legislation by other states or by the federal government because the measure has serious limitations," Anderson said in a release. "It does not even provide a simple, statewide list of what chemicals are used by who and in what quantities."

Data on the FracFocus website are divided on a per-well basis, with no general list of chemicals commonly used throughout the state. Users must choose a state and county and a specific well in that county, and then access information on it.

Industry officials defend the design of the website, countering that the Texas legislation was designed to be helpful to those living closest to specific wells, allowing residents to monitor fracturing activity in their immediate surroundings rather than in more general terms throughout Texas.

Samples of disclosure data that can be downloaded from the website show chemical ingredients listed, but often several trade names for chemical are omitted. For instance, Devon Energy, an early adopter of voluntary disclosure on the site, lists 18 different chemicals in a fluid it used to fracture its Hagan 2 well in Montgomery County, but it only mentions the trade name and "purpose" of the additive for 11 of those.

Some environmentalists also complained that many of the bill's requirements would not take full effect until next year. Texas lawmakers gave state regulators until then to finalize the complete rules on how disclosure should proceed.

But officials at the Railroad Commission, which will oversee the disclosure requirement and regulate companies' participation in it, made that argument moot by drafting and finalizing the rules ahead of the Feb. 1 launch date. Companies now receiving drilling permits from RCC must disclose the chemicals employed in a well within 60 days of fracturing that well.

The commission strongly defends the Texas version of the disclosure law and the procedure by which data on fracturing in wells is being made available.

"Our rule will assure Texans know more about what's going in the ground for energy production than what is contained in some beverages," Chairwoman Elizabeth Ames Jones said at a public hearing held late last year.

The requirement to report volumes of fluid and water used is a nod to Texans' concerns over water supply during the harsh 2011 drought, particularly in parched south Texas, where drilling for oil and natural gas liquids found in the Eagle Ford Shale continues at a brisk pace.

Last week, Railroad Commissioner David Porter told an audience in San Antonio that water supply from the aquifer found in the Eagle Ford region was "currently not an issue." The Eagle Ford Task Force, which he appointed, reportedly looked into the consumption of groundwater for hydraulic fracturing and concluded that the Carrizo Wilcox aquifer that supplies the region contains enough water to continue supporting oil and gas production and other facets of the economy there.

WATER POLLUTION: EPA tests reveal high levels of lead in Chicago

Published: Wednesday, February 1, 2012

New water tests conducted by U.S. EPA showed that half of 29 Chicago homes studied yielded at least one sample containing more than 15 parts per billion of lead, a level high enough to prompt regulatory action if detected during a routine screening.

EPA officials said the results will affect regulators' decision about whether to update the 20-year-old national home tap water testing procedures.

Currently, regulators are required to test only the first liter of water expelled from a homeowner's faucet, and they only take action if more than 10 percent of tested homes exceed 15 parts per billion. Chicago has met that standard for nearly 20 years.

But in the new tests, EPA researchers took samples from at least the first 11 liters poured from sinks. In 16 out of 29 homes tested, at least one of the samples exceeded that 15-parts-per-billion threshold. In some cases, lead levels reached as high as 36.7 parts per billion.

Most high lead levels tended to peter out by the 12th liter or after about three to five minutes of a continuous faucet flow, said Miguel Del Toral, a regulations manager for the EPA Region 5 Ground Water and Drinking Water branch.

Del Toral said the tests were meant to show the worst-case scenarios for lead exposure. EPA says there is no safe level of lead exposure, particularly for infants, children and pregnant women. Health effects include lowered IQ, heart attack and stroke.

"Ideally, we'd like to eliminate all the lead from the system," Del Toral said, adding that the current 15-parts-per-billion threshold was set in 1991 as an achievable goal for cash-strapped municipal water-treatment systems. Although Chicago water is generally lead-free when it leaves treatment plants, the liquid can absorb the heavy metal as it travels through the city's pipes.

The Chicago Department of Water Management, which conducts its tap water tests under the current standards, said it is an active partner in the EPA review and has assured the public that the city's drinking water is on par with the agency's expectations.

"Chicago water is safe and meets or exceeds all standards" set by EPA, the department said in a statement.

EPA plans to publish its findings in a scientific journal this year and is considering tightening national testing standards as part of an anticipated revision of the agency's lead and copper rule (Monica Eng, *Chicago Tribune*, Jan. 31). -- PK

OIL AND GAS: House Resources panel votes to allow Arctic refuge drilling

Phil Taylor, E&E reporter

Published: Wednesday, February 1, 2012

House Republicans took a major step this afternoon toward allowing oil and gas drilling in the Arctic National Wildlife Refuge, a proposal they said would create jobs, increase domestic energy production and fund highway projects.

The Natural Resources Committee voted 29-13 for a bill by Chairman Doc Hastings (R-Wash.) that would require the Obama administration to lease hundreds of thousands of acres of the refuge's oil-rich coastal plain.

Three Democrats -- Dan Boren of Oklahoma, Jim Costa of California and Pedro Pierluisi of Puerto Rico -- voted in favor of the measure, [H.R. 3407](#).

Today's vote is the first time in the 112th Congress that a committee has advanced a bill to allow drilling in the refuge, which is estimated to contain 10 billion barrels of oil. It brings House Republicans a step closer to approving a package of energy and infrastructure bills that their leaders say will raise billions of dollars and plug a major shortfall in highway funding.

The committee earlier today reported a separate bill in the package to resurrect a scrapped George W. Bush administration plan to promote oil shale in the West ([Greenwire](#) , Feb. 1).

"At a time when the economy desperately needs growth and millions of Americans are out of work, opening less than three percent of ANWR for energy production -- as it was originally intended -- will create tens of thousands of jobs and billions of barrels of American oil," Hastings said in a statement.

"ANWR represents one of the single greatest opportunities for new energy production on federal land that will help insulate America against unstable foreign energy supplies and help boost the national economy as well as the local, Alaska Native economies."

Republicans said the bill takes several steps to minimize surface disturbances related to petroleum development, protect wildlife and ensure oil from the refuge is not exported to foreign countries.

The measure allows no more than 10 percent of leased lands to be disturbed and allows the administration to impose seasonal closures in order to protect caribou, fish and other wildlife.

But those assurances brought little relief to critics who argued the 19-million-acre refuge is one of the world's last undisturbed frontiers; that new oil production would do little to reduce gasoline prices; and that drilling, however limited, would fragment crucial habitats and spoil irreplaceable lands.

Moreover, critics argued the bill would do little in the near term to meet an estimated \$12 billion shortfall in the Highway Trust Fund over the next two years.

"The majority members of the House Natural Resources Committee are running on empty, trying to roll this vehicle forward a few more inches before forced to abandon it at the side of the road," said David Moulton, senior director for legislative affairs at the Wilderness Society.

Other critics of the bill argued that future revenues are not worth the damage that drilling would do to the coastal plain.

"The impacts of development extend well beyond the direct footprint or the place where the drill touches the ground," said Cindy Shogan, executive director of the Alaska Wilderness League.

While the bill calls for developing roughly 400,000 acres of the coastal plain's 1.5 million acres, critics warned new airports, permanent gravel roads and pipelines would permanently mark an untrammeled land.

Republicans this afternoon defeated a handful of Democratic amendments, including proposals to prevent the export of natural gas, to guarantee a 50-50 split of revenues and to force oil and gas companies to renegotiate the terms of royalty-free offshore leases purchased in the late 1990s.

Rep. Ed Markey (D-Mass.), the committee's ranking member, said his proposal to end royalty-free leases in the Gulf of Mexico could save taxpayers more than \$50 billion over the next decade, raising far more revenues than the Republican package.

Markey also offered the amendment to an earlier bill promoting oil shale, but it was similarly defeated.

"This amendment does not break anybody's contract," said Rep. John Garamendi (D-Calif.), who was a Interior Department deputy secretary in the Clinton administration.

The amendment says if a potential lessee wants to bid on new leases in ANWR, it will have to renegotiate existing free-of-charge leases it has in the Gulf.

Republicans argued the proposal would make the government liable to breach-of-contract lawsuits.

The ANWR bill is unlikely to pass the Senate either as part of a package or as a stand-alone bill. It would almost certainly be vetoed by the Obama administration, which has preliminarily recommended that Congress designate the coastal plain as wilderness, which would permanently bar surface impacts.

It has been several years since the House has passed a bill to allow drilling in the refuge. More than a dozen House Republicans in 2007 voted against a procedural measure to allow ANWR drilling. Still, most believe the 112th Congress will approve the proposal.

KEYSTONE XL:

Waxman reiterates call for Koch testimony with hearing set to resume Friday

Elana Schor, E&E reporter

Published: Wednesday, February 1, 2012

The latest public airing of congressional tensions over the Keystone XL pipeline is set for Friday, but its deepest partisan schism is coming over a witness uninvited by Republicans.

The House Energy and Commerce Committee's top Democrat, Rep. Henry Waxman of California, today continued to poke the GOP majority over its decision not to seek testimony on Keystone XL from energy conglomerate Koch Industries.

Democrats have long suggested that Koch, known for ties between its two founders and tea party groups that often aim to undercut President Obama's agenda, stands to financially benefit from the pipeline despite its denials of the charge.

Waxman lamented in a letter to Energy and Commerce Chairman Fred Upton (R-Mich.) and Ed Whitfield (R-Ky.), his top subpanel chief, that "Koch Industries is receiving special treatment" following a request that he and Rep. Bobby Rush (D-Ill.) filed last week asking for the company to testify at the committee's next Keystone XL hearing (*E&ENews PM* , Jan. 23).

"If our committee is going to consider legislation that earmarks a specific energy project for approval, members have a right to know who will benefit," Waxman wrote. "Your priority should be promoting transparency, not shielding Koch from legitimate questions."

Waxman also released a Monday letter from Whitfield to Koch that reiterates the Kentuckian's refusal to endorse the Democratic request for testimony from the company.

"Members on both sides of the aisle support this project because of the immense benefits it holds for the national interest, not because of any interest or lack thereof on the part of any individual organization," Whitfield wrote, dismissing the Democrats' bid as an attempt to slow down a GOP plan to fast-track Keystone XL. "We would no sooner compel an individual such as Warren Buffett to appear simply because he stands to benefit financially from denial of the pipeline."

A GOP committee source later clarified that Whitfield's letter served as an invitation, on behalf of the minority, for Koch to appear.

Republicans' invocation of Buffett, whose support for higher capital-gains tax rates has made him something of a Democratic icon, as a counterweight to the Koch name began last week, during the first installment of the Energy and Commerce Committee's hearing (*E&ENews PM* , Jan. 25).

The GOP logic behind bringing up Buffett tracks largely with Waxman's reasons for mentioning the Koch brothers. Democratic charges that their company would profit from the \$7 billion XL link -- an assertion that Koch strongly denies -- stem from the firm's application for "intervenor status" during Canadian regulatory review of the pipeline connecting Alberta's oil sands with Gulf Coast refineries.

Multiple other stakeholders that would not reap direct financial profit from the XL project, including environmental groups that oppose greater consumption of its emissions-heavy fuel, also sought that "intervenor" designation. Similarly, the GOP suggestion that Buffett might profit from Obama's rejection of Keystone XL stems from the resulting shift of oil sands crude transportation to multiple rail lines, including the Burlington Northern railway that the Nebraskan magnate owns.

The Energy and Commerce Committee has yet to release a complete list of witnesses for Friday's hearing, which touches on legislation from Rep. Lee Terry (R-Neb.) that would remove the pipeline from Obama's jurisdiction and spur its approval by the Federal Energy Regulatory Commission. Republican leaders plan to attach the Terry bill to their long-term transportation measure, if it does not come to the floor as part of a payroll tax-cut package now being negotiated with the Senate.

But committee Democrats disclosed the group of invitees they sought -- in addition to Koch, it includes a Nebraska rancher who has mobilized local opposition to Keystone XL and a representative from pipeline sponsor TransCanada Corp. Other witnesses sought by Waxman's party include representatives from the Army Corps of Engineers and the Bureau of Land Management, which typically help work out permits and approvals for large-scale infrastructure such as pipelines.

A Democratic committee source said the BLM and Army Corps witnesses would "testify about how the Terry bill removes current permitting duties that protect clean water and achieve other goals."

[Click here](#) to read Whitfield's letter to Koch.

[Click here](#) to read Waxman's letter to Upton and Whitfield.

Schedule: The hearing is Friday, Feb. 3, at 10 a.m. in 2322 Rayburn.

Witnesses: TBA.

ClimateWire -- Thu., February 2, 2012 -- [Read the full edition](#)

1. ENERGY EFFICIENCY: Republican lawmakers press their case for incandescent light bulbs in 6 states

Republican politicians launched their light bulb war in Washington last year. While they failed to get this year's federal regulations

phasing out most types of incandescent light bulbs overturned, the battle plods on. As of Jan. 1, manufacturing or importing 100-watt lights for sale in the United States is illegal, and 75-, 60- and 40-watt bulbs will reach that point by 2014, but six states have pending legislation that could free them from the new energy guidelines.

TODAY'S STORIES

- 2. RENEWABLE ENERGY: Wind power developers see declining costs, but market forces, tax credit expiration dim growth prospects
- 3. WEATHER: Could climate change put the groundhog out of business?
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